
OLR Bill Analysis

HB 5147 (as amended by House "A" and "B")*

AN ACT CONCERNING THE UNAUTHORIZED PRACTICE OF LAW BY NOTARIES PUBLIC.

SUMMARY:

This bill generally increases the penalty for the unauthorized practice of law and makes additional conduct subject to such penalties. As part of these changes, the bill repeals § 116 of HB 5145, which changes the penalty for the unauthorized practice of law.

The bill creates an explicit exception to the ban on the unauthorized practice of law for people who are authorized to provide legal services pursuant to a statute or court rule. (For example, court rules allow attorneys practicing “pro hac vice,” authorized house counsel, and foreign legal consultants to provide legal services here under certain conditions without admission to the state bar.) The bill also includes within the prohibition on unauthorized practice someone who has been admitted to the Connecticut bar but is disqualified from practicing law for specified reasons (e.g., disbarment or certain suspensions).

The bill prohibits a notary public from offering or providing legal advice in immigration matters, or representing someone in immigration proceedings, unless the notary public is (1) an attorney admitted to the Connecticut bar or (2) authorized by federal regulations to practice immigration law or represent people in immigration proceedings (see BACKGROUND).

The bill also prohibits a notary public from assuming, using, or advertising the title of notario or notario publico (see BACKGROUND) unless he or she (1) is an attorney admitted to the Connecticut bar or (2) indicates in an advertisement or otherwise provides written notice

that he or she is not a state-licensed attorney.

Under the bill, any notary public who violates these provisions is deemed to have violated the prohibition on the unauthorized practice of law, and is subject to the fine or imprisonment that applies to unauthorized practice.

The bill also makes technical changes.

*House Amendment "A" adds the provisions concerning the penalties for, and conduct constituting, the unauthorized practice of law, other than those specifically relating to notaries and notarios.

*House Amendment "B" adds the provision allowing a notary to use the title of notario or notario publico if the notary indicates in an advertisement or written notice that he or she is not a state-licensed attorney.

EFFECTIVE DATE: October 1, 2012, except the repeal of § 116 of HB 5145 is effective upon passage.

UNAUTHORIZED PRACTICE OF LAW

Penalties and Exceptions

Under current law, someone who illegally practices law is subject to up to two months' imprisonment, a fine of up to \$250, or both. The bill repeals a provision of HB 5145 (§ 116) that would classify the offense as a class C misdemeanor, punishable by up to two months' imprisonment, up to a \$500 fine, or both.

The bill generally increases the penalty for the unauthorized practice of law to a class A misdemeanor, punishable by up to one year in prison, up to a \$2,000 fine, or both. But the bill keeps the current penalty if the defendant proves, by a preponderance of the evidence, that he or she committed the unlawful acts while an admitted member of good standing of the bar of (1) another state, (2) the District of Columbia, (3) Puerto Rico, (4) a U.S. territory, or (5) a U.S. district court.

Under existing law, unchanged by the bill, the penalties for the unauthorized practice of law do not apply to someone who (1) is an admitted member in good standing of the bar of any of the above specified jurisdictions and (2) within the scope of his or her employment, gives legal advice to his or her employer or its corporate affiliate.

The bill also provides that in any prosecution for soliciting, requesting, commanding, importuning, or intentionally aiding in the unauthorized practice of law, or in any prosecution for conspiracy to commit the unauthorized practice of law, the state has the burden of proving, beyond a reasonable doubt, that the defendant had actual knowledge that the person was not admitted to practice law in any jurisdiction at the time the violation occurred.

Prohibited Activities

Current law generally prohibits anyone who has not been admitted to the Connecticut bar from undertaking various activities. The bill extends this prohibition, with the exceptions noted above, to someone who has been admitted but is disqualified from practicing law because he or she has resigned, is disbarred, placed on inactive status or suspended for any reason other than failing to pay the occupational tax on attorneys or client security fund fee required by law. Prohibited activities include:

1. practicing law or appearing as an attorney for anyone else in any court in the state;
2. making it a business to practice law or appear as an attorney for anyone else in any such court;
3. making it a business to solicit employment as an attorney;
4. holding oneself out to the public as being entitled to practice law;
5. assuming the role of an attorney;

6. assuming, using, or advertising the title of lawyer, attorney and counselor-at-law, attorney-at-law, counselor-at-law, attorney, counselor, attorney and counselor, or an equivalent term, in a manner suggesting that he or she is a legal practitioner of law; and
7. advertising that he or she, either alone or with others, owns, conducts, or maintains a place of business of any kind for the practice of law.

BACKGROUND

Related Federal Regulations

Federal regulations allow non-profit religious, charitable, social service, or similar organizations established in the United States and recognized as such by the Board of Immigration Appeals to designate one or more representatives to represent people in immigration matters. The organization must establish to the board's satisfaction that it (1) makes only nominal charges and does not assess excessive membership dues for people it assists and (2) has at its disposal adequate knowledge, information, and experience. Regulations specify how organizations may apply for such recognition; how the board may withdraw recognition; how recognized organizations may apply for accreditation of persons of good moral character as their representatives; and related matters (8 C.F.R. § 292.2).

Notario Publico

In many Spanish-speaking countries, a "notario publico" is authorized to perform certain services that in the United States are reserved to lawyers (Office of the Connecticut Secretary of the State, Notary Public Manual, pg. 14).

Related Bill

sHB 5145 as amended by House Amendment "A," passed by the House on April 30, 2012, makes the unauthorized practice of law a class C misdemeanor, punishable by up to two months' imprisonment, up to a \$500 fine, or both.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 45 Nay 0 (04/02/2012)